

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 811

Introduced by Transportation and Telecommunications Committee:  
Fischer, 43, Chairperson; Campbell, 25; Gay, 14;  
Hadley, 37; Lautenbaugh, 18; Louden, 49; Stuthman,  
22.

Read first time January 08, 2010

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Public Service Commission; to amend  
2 sections 71-1567, 71-4609, 75-134, 75-136, 75-156,  
3 75-722, 86-123, 86-158, 86-209, 86-255, 86-269, and  
4 86-578, Reissue Revised Statutes of Nebraska; to change  
5 appeal procedures as prescribed; to harmonize provisions;  
6 to provide an operative date; and to repeal the original  
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 71-1567, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           71-1567 (1) The commission shall refuse to issue a seal  
4 to a manufacturer for any modular housing unit not found to be in  
5 compliance with its standards governing the construction of or the  
6 structural, plumbing, heating, or electrical systems for modular  
7 housing units or for which fees have not been paid. Except in  
8 case of failure to pay the required fees, any such manufacturer  
9 may request a hearing before the commission on the issue of such  
10 refusal. Procedures for notice and opportunity for a hearing before  
11 the commission shall be pursuant to the Administrative Procedure  
12 Act. The refusal may be appealed, and the appeal shall be in  
13 accordance with ~~the Administrative Procedure Act.~~ section 75-136.

14           (2) The issuance of seals may be suspended as to any  
15 manufacturer who is convicted of violating section 71-1563 or  
16 as to any manufacturer who violates any other provision of the  
17 Nebraska Uniform Standards for Modular Housing Units Act or any  
18 rule, regulation, commission order, or standard adopted pursuant  
19 thereto, and issuance of the seals shall not be resumed until such  
20 manufacturer submits sufficient proof that the conditions which  
21 caused the violation have been remedied. Any such manufacturer  
22 may request a hearing before the commission on the issue of such  
23 suspension. Procedures for notice and opportunity for a hearing  
24 before the commission shall be pursuant to the Administrative  
25 Procedure Act. The suspension may be appealed, and the appeal shall

1 be in accordance with ~~the Administrative Procedure Act.~~ section  
2 75-136.

3           Sec. 2. Section 71-4609, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           71-4609 (1) The commission shall administer the Uniform  
6 Standard Code for Manufactured Homes and Recreational Vehicles.  
7 The commission may adopt and promulgate, amend, alter, or  
8 repeal general rules and regulations of procedure for (a)  
9 administering the provisions of the code, (b) issuing seals, (c)  
10 obtaining statistical data respecting the manufacture and sale of  
11 manufactured homes and recreational vehicles, and (d) prescribing  
12 means, methods, and practices to make effective such provisions.

13           (2) The commission shall refuse to issue a seal to  
14 any manufacturer or other person for any manufactured home or  
15 recreational vehicle found to be not in compliance with its  
16 standards governing body and frame design and construction or  
17 plumbing, heating, or electrical systems for manufactured homes or  
18 recreational vehicles or for which fees have not been paid. Except  
19 in case of failure to pay the required fees, any such manufacturer  
20 or other person may request a hearing before the commission on  
21 the issue of such refusal. Procedures for notice and opportunity  
22 for a hearing before the commission shall be pursuant to the  
23 Administrative Procedure Act. The refusal by the commission may  
24 be appealed, and the appeal shall be in accordance with ~~the act.~~  
25 section 75-136.

1           (3) The issuance of seals may be suspended or revoked as  
2 to any manufacturer or other person who has not complied with any  
3 provision of the code or with any rule, regulation, or standard  
4 adopted and promulgated under the code or who is convicted of  
5 violating section 71-4608, and issuance of the seals shall not be  
6 resumed until such manufacturer or other person submits sufficient  
7 proof that the conditions which caused the lack of compliance or  
8 the violation have been remedied. Any manufacturer or other person  
9 may request a hearing before the commission on the issue of such  
10 suspension or revocation. Procedures for notice and opportunity  
11 for a hearing before the commission shall be pursuant to the  
12 Administrative Procedure Act. The suspension or revocation by the  
13 commission may be appealed, and the appeal shall be in accordance  
14 with ~~the act.~~ section 75-136.

15           (4) The commission may conduct hearings and presentations  
16 of views consistent with the regulations adopted by the United  
17 States Department of Housing and Urban Development and adopt and  
18 promulgate such rules and regulations as are necessary to carry out  
19 this function.

20           (5) The commission shall establish a monitoring  
21 inspection fee in an amount approved by the United States Secretary  
22 of Housing and Urban Development, which fee shall be an amount paid  
23 to the commission by the manufacturer for each manufactured-home  
24 seal issued in the state. An additional monitoring inspection fee  
25 established by the United States Secretary of Housing and Urban

1 Development shall be paid by the manufacturer to the secretary  
2 who shall distribute the fees collected from all manufactured-home  
3 manufacturers based on provisions developed and approved by the  
4 secretary.

5 Sec. 3. Section 75-134, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 75-134 (1) A commission order entered after a hearing  
8 shall be written and shall recite (a) a discussion of the facts  
9 of a basic or underlying nature, (b) the ultimate facts, and (c)  
10 the commission's reasoning or other authority relied upon by the  
11 commission.

12 (2) Every order of the commission shall become effective  
13 ten days after the date of the mailing of a copy of the order to  
14 the parties of record except (a) when the commission prescribes a  
15 ~~later~~ an alternate effective date, (b) as otherwise provided in  
16 section 75-121 or 75-139, (c) for cease and desist orders issued  
17 pursuant to section 75-133 which shall become effective on the date  
18 of entry, or (d) for orders entered pursuant to section 75-319  
19 which shall become effective on the date of entry.

20 (3) Except as otherwise provided in this section or  
21 for rate orders provided for in section 75-139, any appeal of a  
22 commission order shall ~~not~~ stay enforcement of such order. ~~unless~~  
23 ~~otherwise ordered under subsection (3) of section 84-917.~~

24 Sec. 4. Section 75-136, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           75-136 Except as otherwise provided by law, if a party  
2 to any proceeding is not satisfied with the order entered by the  
3 commission, such party may appeal. ~~Any appeal filed on or after~~  
4 ~~August 31, 2003, shall be in accordance with the Administrative~~  
5 ~~Procedure Act. Any appeal filed prior to August 31, 2003, shall be~~  
6 ~~in accordance with sections 75-134, 75-136 to 75-138, and 75-156 as~~  
7 ~~such sections existed prior to the changes made by Laws 2003, LB~~  
8 ~~187. Such appeal shall be filed in the Court of Appeals under the~~  
9 ~~rules provided by law for appeals in civil cases.~~

10           Sec. 5. Section 75-156, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           75-156 (1) In addition to other penalties and relief  
13 provided by law, the Public Service Commission may, upon a finding  
14 that the violation is proven by clear and convincing evidence,  
15 assess a civil penalty of up to ten thousand dollars per day  
16 against any person, motor carrier, regulated motor carrier, common  
17 carrier, contract carrier, grain dealer, or grain warehouseman  
18 for each violation of (a) any provision of the laws of this  
19 state within the jurisdiction of the commission as enumerated in  
20 section 75-109.01, (b) any term, condition, or limitation of any  
21 certificate, permit, or authority issued by the commission pursuant  
22 to the laws of this state within the jurisdiction of the commission  
23 as enumerated in section 75-109.01, or (c) any rule, regulation,  
24 or order of the commission issued under authority delegated to  
25 the commission pursuant to the laws of this state within the

1 jurisdiction of the commission as enumerated in section 75-109.01.

2 (2) In addition to other penalties and relief provided  
3 by law, the Public Service Commission may, upon a finding that  
4 the violation is proven by clear and convincing evidence, assess a  
5 civil penalty not less than one hundred dollars and not more than  
6 one thousand dollars against any jurisdictional utility for each  
7 violation of (a) any provision of the State Natural Gas Regulation  
8 Act, (b) any rule, regulation, order, or lawful requirement issued  
9 by the commission pursuant to the act, (c) any final judgment  
10 or decree made by any court upon appeal from any order of  
11 the commission, or (d) any term, condition, or limitation of  
12 any certificate issued by the commission issued under authority  
13 delegated to the commission pursuant to the act. The amount of  
14 the civil penalty assessed in each case shall be based on the  
15 severity of the violation charged. The commission may compromise  
16 or mitigate any penalty prior to hearing if all parties agree.  
17 In determining the amount of the penalty, the commission shall  
18 consider the appropriateness of the penalty in light of the gravity  
19 of the violation and the good faith of the violator in attempting  
20 to achieve compliance after notification of the violation is given.

21 (3) In addition to other penalties and relief provided  
22 by law, the Public Service Commission may, upon a finding that  
23 the violation is proven by clear and convincing evidence, assess  
24 a civil penalty of up to ten thousand dollars per day against any  
25 wireless carrier for each violation of the Enhanced Wireless 911

1 Services Act or any rule, regulation, or order of the commission  
2 issued under authority delegated to the commission pursuant to the  
3 act.

4 (4) In addition to other penalties and relief provided  
5 by law, the Public Service Commission may, upon a finding that  
6 the violation is proven by clear and convincing evidence, assess  
7 a civil penalty of up to one thousand dollars against any person  
8 for each violation of the Nebraska Uniform Standards for Modular  
9 Housing Units Act or the Uniform Standard Code for Manufactured  
10 Homes and Recreational Vehicles or any rule, regulation, or order  
11 of the commission issued under the authority delegated to the  
12 commission pursuant to either act. Each such violation shall  
13 constitute a separate violation with respect to each modular  
14 housing unit, manufactured home, or recreational vehicle, except  
15 that the maximum penalty shall not exceed one million dollars for  
16 any related series of violations occurring within one year from the  
17 date of the first violation.

18 (5) The civil penalty assessed under this section shall  
19 not exceed two million dollars per year for each violation except  
20 as provided in subsection (4) of this section. The amount of  
21 the civil penalty assessed in each case shall be based on the  
22 severity of the violation charged. The commission may compromise  
23 or mitigate any penalty prior to hearing if all parties agree.  
24 In determining the amount of the penalty, the commission shall  
25 consider the appropriateness of the penalty in light of the gravity

1 of the violation and the good faith of the violator in attempting  
2 to achieve compliance after notification of the violation is given.

3 (6) Upon notice and hearing in accordance with this  
4 section and section 75-157, the commission may enter an order  
5 assessing a civil penalty of up to one hundred dollars against any  
6 person, firm, partnership, limited liability company, corporation,  
7 cooperative, or association for failure to file an annual report  
8 or, beginning January 1, 2004, pay the fee as required by section  
9 75-116 and as prescribed by commission rules and regulations or  
10 for failure to register as required by section 86-125 and as  
11 prescribed by commission rules and regulations. Each day during  
12 which the violation continues after the commission has issued an  
13 order finding that a violation has occurred constitutes a separate  
14 offense. Any party aggrieved by an order of the commission under  
15 this section may appeal. The appeal shall be in accordance with ~~the~~  
16 ~~Administrative Procedure Act.~~ section 75-136.

17 (7) When any person or party is accused of any violation  
18 listed in this section, the commission shall notify such person  
19 or party in writing (a) setting forth the date, facts, and nature  
20 of each act or omission upon which each charge of a violation  
21 is based, (b) specifically identifying the particular statute,  
22 certificate, permit, rule, regulation, or order purportedly  
23 violated, (c) that a hearing will be held and the time, date, and  
24 place of the hearing, (d) that in addition to the civil penalty,  
25 the commission may enforce additional penalties and relief as

1 provided by law, and (e) that upon failure to pay any civil penalty  
2 determined by the commission, the penalty may be collected by civil  
3 action in the district court of Lancaster County.

4 Sec. 6. Section 75-722, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 75-722 Commission hearings concerning the provisions of  
7 sections 75-709 to 75-724 and ~~any appeals therefrom~~ shall be  
8 in accordance with the Administrative Procedure Act. Any appeals  
9 therefrom shall be in accordance with section 75-136.

10 Sec. 7. Section 86-123, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 86-123 (1) The commission shall regulate the quality of  
13 telecommunications service provided by telecommunications companies  
14 and shall investigate and resolve subscriber complaints concerning  
15 quality of telecommunications service, subscriber deposits, and  
16 disconnection of telecommunications service. If such a complaint  
17 cannot be resolved informally, then, upon petition by the  
18 subscriber, the commission shall set the matter for hearing in  
19 accordance with the commission's rules and regulations for notice  
20 and hearing. The commission may by order grant or deny, in whole  
21 or in part, the subscriber's petition or provide such other  
22 relief as is reasonable based on the evidence presented at the  
23 hearing. Any such order of the commission may be enforced against  
24 any telecommunications company as provided in sections 75-140 to  
25 75-144, and such order may be appealed by an interested party. The

1 appeal shall be in accordance with ~~the Administrative Procedure~~  
2 ~~Act.~~ section 75-136.

3 (2) The commission may regulate telecommunications  
4 company rates pursuant to sections 86-139 to 86-157.

5 (3) The Nebraska Telecommunications Regulation Act shall  
6 preempt and prohibit any regulation of a telecommunications company  
7 by counties, cities, villages, townships, or any other local  
8 governmental entity.

9 Sec. 8. Section 86-158, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 86-158 (1) Except as otherwise provided in section  
12 86-123, any order of the commission entered pursuant to authority  
13 granted in the Nebraska Telecommunications Regulation Act may be  
14 appealed by any interested party to the proceeding. The appeal  
15 shall be in accordance with ~~the Administrative Procedure Act.~~  
16 section 75-136.

17 (2) In an original action concerning a violation of the  
18 Nebraska Telecommunications Regulation Act by a telecommunications  
19 company, the commission shall have jurisdiction as set forth in  
20 section 75-132.01. After all administrative remedies before the  
21 commission have been exhausted, an appeal may be brought by an  
22 interested party to an action. Such appeal shall be in accordance  
23 with ~~the Administrative Procedure Act.~~ section 75-136.

24 Sec. 9. Section 86-209, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   86-209 (1) Notwithstanding section 75-156, the commission  
2 may, after hearing, impose an administrative penalty for a  
3 violation of the Telephone Consumer Slamming Prevention Act. The  
4 penalty for a violation shall not exceed two thousand dollars.  
5 Every violation associated with a specific access line within the  
6 state shall be considered a separate and distinct violation.

7                   (2) The amount of an administrative penalty shall be  
8 based on:

9                   (a) The nature, circumstances, extent, and gravity of a  
10 prohibited act;

11                   (b) The history of previous violations;

12                   (c) The amount necessary to deter future violations; and

13                   (d) Any efforts to correct the violation.

14                   (3) The commission shall remit any administrative  
15 penalty collected under this section to the State Treasurer for  
16 distribution in accordance with Article VII, section 5, of the  
17 Constitution of Nebraska.

18                   (4) Any administrative penalty may be appealed. The  
19 appeal shall be in accordance with ~~the Administrative Procedure~~  
20 ~~Act.~~ section 75-136.

21                   Sec. 10. Section 86-255, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23                   86-255 Any decision of the commission made pursuant to  
24 the Automatic Dialing-Announcing Devices Act or the rules and  
25 regulations may be appealed. The appeal shall be in accordance with

1 ~~the Administrative Procedure Act.~~ section 75-136.

2           Sec. 11. Section 86-269, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           86-269 (1) The commission shall adopt and promulgate  
5 rules and regulations necessary to carry out the Intrastate  
6 Pay-Per-Call Regulation Act.

7           (2) The commission may conduct investigations and shall  
8 enforce the act.

9           (3) Upon written complaint and supporting affidavit that  
10 an applicable rule or regulation or any provision of the act  
11 has been or is being violated, the commission may enter a cease  
12 and desist order on an ex parte basis against a party named in  
13 a complaint alleging violation of the act. The order shall have  
14 duration of no more than twenty days, and a hearing upon the  
15 complaint shall be held no later than twenty days after the order  
16 is entered by the commission.

17           (4) A decision of the commission made pursuant to the  
18 act and rules and regulations of the commission may be appealed.  
19 The appeal shall be in accordance with ~~the Administrative Procedure~~  
20 ~~Act.~~ section 75-136.

21           Sec. 12. Section 86-578, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           86-578 In an original action concerning a violation  
24 of any provision of sections 86-574 to 86-578 by an agency or  
25 political subdivision of the state, the Public Service Commission

1 shall have the jurisdiction set forth in section 75-132.01. After  
2 all administrative remedies before the Public Service Commission  
3 have been exhausted, an appeal may be brought by an interested  
4 party. Such appeal shall be in accordance with ~~the Administrative~~  
5 ~~Procedure Act, section 75-136.~~

6           Sec. 13. This act becomes operative on August 31, 2010.

7           Sec. 14. Original sections 71-1567, 71-4609, 75-134,  
8 75-136, 75-156, 75-722, 86-123, 86-158, 86-209, 86-255, 86-269, and  
9 86-578, Reissue Revised Statutes of Nebraska, are repealed.